IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3498 OF 2003

Aananda B. Mandare ..Petitioner.
Vs.
Shri Kalleshwar Sah. Pat. Maryadit
& Ors. ..Respondents.

Mr.S.S.Redekar, adv. for the Petitioner.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 19, 2007.

P.C.:

1. Heard Mr.Redekar the learned counsel for the petitioner. Notice was served on the respondent no.1, who is original disputant, specifically indicating that this petition may be disposed off finally at the stage of admission but in spite of that none has appeared. Perused the record.

2. It appears from the record that the petitioner, who is the original opponent in the dispute, had obtained a personal loan of Rs.5,000/- from the respondent no.1 co-operative bank on 22-5-1989 and the loan was to carry interest at the rate of 18% per annum and was to be repaid within 18 months. Necessary documents were executed by the present petitioner and his guarantors, who are the respondent nos.2 and 3. The respondent no.1 filed dispute case no.CC/III/480 of

2000 before the Co-operative Court No.III, Bombay for recovery of an amount of Rs.31,350/-. On 16-3-2002, the award was passed in favour of the respondent no.1 observing that in spite of service, opponent nos.2 and 3 had not appeared and the opponent no.1 had not filed his application for leave to defend. According to the petitioner after he got knowledge of the award, he filed an application for certified copy. There was delay in receiving the copy, and, therefore, finally he preferred appeal on 22nd November, 2002 with application for condonation of delay. That application came to be rejected by the learned Member of the Co-operative Court on the ground that sufficient reasons were not given.

3. Coming to the award passed by the Co-operative Court, record reveals that the petitioner, who was opponent no.1 had filed application on 23-1-2001 the day on which he appeared for the first time contending that alongwith summons, the opponent had not received copy of the dispute application. He made an application for supply of the copy so that he could file his reply and seek leave to defend. No order appears to have been passed on that application and on 16-3-2002, the learned Judge Co-operative Court passed the impugned order stating that the opponent no.1 had appeared through his advocate but had not filed any

application for leave to defend the dispute and, therefore, it was proceeded ex-parte. In fact, the learned Co-operative Court Judge should have directed the disputant society to supply the copy of the dispute application so that the opponent could file a reply and seek leave to defend.

4. After perusal of the order dated 29-1-2003 passed by the learned Member, I find that the petitioner had tried to explain the delay. The learned Member Appellate Court failed to notice that according to the respondent no.1 society, loan of Rs.5,000/- was advanced in May, 1989 and in the year 2000, dispute was filed for recovery of Rs.31,150/- which is shocking. In the interest of justice, delay should have been condoned and the appeal should have been registered but the learned Member committed error in rejecting that application.

5. For the aforesaid reasons, petition is allowed. Impugned order passed by the Member, Co-operative Appellate Court in Miscellaneous Civil Appeal No.270 of 2002 is hereby set aside. Application for condonation

of delay is allowed. The learned Co-operative Appellate Court shall hear the appeal of the petitioner on its own merits.

[J.H.BHATIA, J.]